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October 21, 2019

**Via Electronic Submission at <https://oehha.ca.gov/comments>**

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23rd Floor  
P.O. Box 4010  
Sacramento, CA 95814

Re: Comment to Notice of Modification to Proposed Regulatory Action to Amend  
Section 25600.2 of Title 27 of the California Code of Regulations

Dear Ms. Vela:

I write on behalf of my client, Amazon, in response to OEHHA's request for comments on the October 4, 2019 modifications to the November 2018 proposed amendments to Section 25600.2 of Title 27 of the California Code of Regulations. Amazon appreciates OEHHA's efforts to clarify Section 25600.2, but we encourage you to revert to the text of the earlier amendments in two places where we believe the amendments provided greater clarity before the recent modifications.

**Section 25600.2(f)(1) – persons who receive knowledge of the retail seller**

OEHHA originally proposed amending the definition of “[a]ctual knowledge” to mean in relevant part:

“...received by the authorized agent or a person whose knowledge can be imputed to the retail seller ....” This proposed amendment provided specific guidance for retail sellers to know when they have acquired information triggering a warning responsibility.

OEHHA now proposes to modify the definition of “[a]ctual knowledge” as follows: “... received by the retail seller, its authorized agent or a person whose knowledge can be imputed to the retail seller.” (italics added). The addition of the phrase “the retail seller” to Section 25600.2(f)(1), as noted in italics, dilutes the clarification provided by the original amendment.

Specifically, the amendment clarified that “actual knowledge” must be received by (a) the authorized agent of the retail seller or (b) someone whose knowledge can be imputed to the retail seller. By adding “the retail seller” to this list, the modification renders superfluous the amendment specifically designating the retailer’s “authorized agent or a person whose knowledge can be imputed to the retail seller” as recipients of actual knowledge.

The modification adding the phrase “the retail seller” as shown in italics above should be stricken in favor of the original amendment.

## **Section 25600.2(f)(1) – actual knowledge of a specific exposure from a specific product**

OEHHA originally proposed amending the definition of “[a]ctual knowledge” to mean in relevant part: “...specific knowledge of the consumer product exposure with sufficient specificity for the retail seller to readily identify the product that requires a warning...” This proposed amendment clarified the specificity required to establish actual knowledge, including both the consumer product exposure and the product requiring a warning.

OEHHA now proposes a modification to the proposed amendment to state that “[a]ctual knowledge” means, in relevant part: “...information from any reliable source that allows it to identify the specific product or products that cause the consumer product exposure.” This proposed modification dilutes the clarity provided in the proposed amendment. For example, this modification may be mistakenly read to imply that specificity is only required with respect to the identity of the product or products at issue and that actual knowledge does not require specific knowledge of any exposure. That would be contrary to the law as Proposition 65 only applies to persons who knowingly and intentionally cause an exposure.

Comments to the proposed amendments suggested that this modification was necessary to conform the definition of “actual knowledge” of a retail seller in Section 25600.2(f) with the requirements for “notices of violation” in Section 25903(b)(2)(D) requiring “sufficient specificity to inform the recipients of the nature of the items allegedly sold in violation of the law.” But the requirements for “notices of violation” encompass more than this new proposed definition of “actual knowledge,” including not only the product at issue (Section 25903(b)(2)(D)) but also the exposure (Section 25903(b)(2)(A), (C) & (D)) and circumstances of the alleged violation (Section 25903(b)(2)(A)(1)-(4)). As proposed, the modifications require less specificity to establish the “actual knowledge” of a retail seller than to meet the requirements for “notices of violation.”

The text of the proposed modifications should be rejected in favor of the text of the original proposed amendments noted above, which provided greater clarity as to the meaning of “actual knowledge.”

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Office of Environmental Health Hazard Assessment  
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Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy P. Lally", with a stylized flourish at the end.

Amy P. Lally  
Partner